

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/24/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-090031

FILED: _____

STATE OF ARIZONA

ROGER KEVIN HAYS

v.

STEPHEN EMERY KOVACH IV

STEPHEN EMERY KOVACH IV
9255 S POPLAR
TEMPE AZ 85284-0000

MESA CITY COURT
REMAND DESK-SE

MINUTE ENTRY

MESA CITY COURT

Cit. No. 9163364

Charge: A. RED LIGHT VIOLATION

DOB: 06/05/54

DOC: 06/19/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on June 3, 2002. This Court has reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue raised by Appellant is his contention that the trial court erred in denying his Motion to Set Aside the Entry of Default. Appellant was accused on June 19, 2001 of a Red Light Violation by virtue of photographs taken by automatic cameras located at the intersection of Mesa Drive and Southern within the city of Mesa. The Court's file reflects service of the complaint upon Appellant at his residence on September 4, 2001. The summons requires that Appellant appear September 17, 2001 at the Mesa City Court. The trial court's file also reflects that Appellant failed to appear before the deadline and a default judgment was granted and entered against him. By letter dated October 18, 2001 (more than 30 days after he was scheduled to appear in court), Appellant asked for information about the status of his citation. The trial court considered Appellant's letter as a Motion to Set Aside the Default Judgment and granted that motion. The trial court scheduled Appellant's hearing for November 27, 2001 at 4:00 p.m. Appellant failed to appear on that date and time and another default judgment was entered against him. By letter dated November 28, 2001, Appellant requested that the judge "reschedule" the hearing. Appellant's reason was:

I realized this morning that I missed my Tuesday, November 27th afternoon court appearance. I intended to be present when I received the original notice a few weeks ago. However, I was tied up with work in Tucson and the date skipped my mind.

The trial court denied this motion to set aside. Contrary to the assertions by the Appellant in his memorandum, the letter of November 28, 2001 failed to state a reason that might be considered "excusable neglect". Appellant's reason that the

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trial "date skipped my mind" is insufficient. Furthermore, Appellant failed to include any reasons within his request to reschedule the hearing that would indicate he had a meritorious defense to the charge. Only in later letters to the court Appellant claimed such a meritorious defense.

This Court finds that the trial court did not err in denying Appellant's Motion to Set Aside the Default Judgment.

IT IS THEREFORE ORDERED affirming the judgment of responsibility and sanction imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.